



**Where a number of undertakings are present on a construction site, EU law requires that a safety coordinator be appointed and that a safety plan be drawn up where there are particular risks**

*Whether or not planning permission is required is irrelevant*

The Directive on the implementation of minimum safety and health requirements at temporary or mobile construction sites<sup>1</sup> provides that, for any construction site where more than one contractor is present, the client or project supervisor must appoint a coordinator for safety and health matters, who is responsible for the implementation of the general principles of prevention and safety for the protection of workers. It further provides that the client supervisor or the project supervisor must see that a safety plan is drawn up where works involve particular risks for the safety or health of workers. Those works are listed non-exhaustively in the Directive.

Under the Italian legislation implementing that directive, the requirement to appoint such a coordinator and draw up such a plan does not apply to private works for which planning permission is not required.

In 2008, inspectors of the Office for Safety in the Workplace of the Autonomous Province of Bolzano carried out an inspection on a construction site for the replacement of the roof of a dwelling house measuring approximately 6 to 8 metres in height. The protective railing, the crane and the workforce were provided by three different contractors all present on the site at the same time. Under the Italian legislation, no building permit was required for the works. The owner of the building, who was also the client supervisor, was charged with failing to have regard to the safety duties imposed by the Directive.

The Tribunale di Bolzano was in doubt about the derogations provided for under Italian law to the requirement to appoint a safety coordinator. That court considered that, acting on the assumption that a construction site on which private works are carried out entails work that is modest in scale and devoid of risks, the national legislature failed to recognise that works which are not subject to planning permission may also be complex and hazardous and therefore require a coordinator to be appointed for the project.

That court asked the Court of Justice, essentially, whether the Directive precludes national legislation under which, first, for private works not subject to planning permission on a construction site on which more than one contractor is to be present, it is possible to derogate from the requirement to appoint a safety coordinator for both the project preparation stage and the execution of the works and, second, the coordinator is required to draw up a safety and health plan only where, in the case of private works not subject to planning permission, more than one contractor is engaged.

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<sup>1</sup> Council Directive 92/57/EEC of 24 June 1992 on the implementation of minimum safety and health requirements at temporary or mobile construction sites (eighth individual Directive within the meaning of Article 16(1) of Directive 89/391/EEC) (OJ 1992 L 245, p. 6, with corrigendum OJ 1993 L 41, p. 50).

The Court has previously had the opportunity to rule on the Italian legislation on the requirement to appoint coordinators and draw up a safety plan<sup>2</sup>.

In its judgment today, the Court reiterates, first, that the Directive sets out unequivocally the requirement to appoint a coordinator for safety and health matters on any construction site on which more than one contractor is to be present, and therefore does not permit any derogation from that requirement.

Accordingly, **a coordinator for safety and health matters must always be appointed for a construction site on which more than one contractor is to be present**, at the project preparation stage or, in any event, before the works commence, irrespective of whether the works are subject to planning permission or whether the work on the site involves particular risks.

The Directive therefore precludes national legislation under which, for private works not subject to planning permission on a construction site on which more than one contractor is to be present, it is possible to derogate from the requirement imposed on the client or project supervisor to appoint a coordinator for safety and health matters at the project preparation stage or, in any event, before the works commence.

Second, the Directive permits the Member States, after consulting both management and the workforce, to allow derogations from the requirement to draw up a safety and health plan, except where it is a question of work involving particular risks as listed in the Directive, or work for which prior notice is required.

It follows that, prior to the setting up of a construction site, **a safety and health plan must be drawn up for any construction site on which the works involve particular risks**, such as those as listed in the Directive, the number of contractors present on the site being irrelevant in that connection.

The Directive therefore precludes national legislation under which the requirement for the coordinator responsible for the execution stage of the works to draw up a safety and health plan is confined to the situation in which more than one contractor is engaged on a construction site involving private works that are not subject to planning permission and which does not use the particular risks such as those listed in the Directive as criteria for that requirement.

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**NOTE:** A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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The [full text](#) of the judgment is published on the CURIA website on the day of delivery.

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<sup>2</sup> Case [C-504/06](#) *Commission v Italy*.